STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED REVISIONS TO THE STATE IMPLEMENTATION PLAN FOR REGIONAL HAZE **No. EIB 11-01 (R)**

NMED EXHIBIT 9a
WRITTEN TESTIMONY OF RITA BATES
PROPOSED REVISIONS TO § 309 SIP

The Environmental Improvement Board approved the New Mexico Regional Haze State Implementation Plan in 2003 pursuant to requirements under 40 CFR 51.309 (Section 309). The plan was submitted to the U.S. Environmental Protection Agency (EPA) and became effective on December 31, 2003, but has not been approved by EPA. The revisions proposed in this proceeding are in response to changes to Section 309 and other developments that have occurred since 2003.

Proposed revisions to the 309 SIP include:

- Updates to the projection of visibility improvement incorporating the Western Regional Air Partnership (WRAP) modeling updates
- Sulfur dioxide backstop trading program revisions
- Revision of the geographic enhancement section to recognize EPA's approval of New Mexico's Phase I visibility SIP in 2006,
- A demonstration that the SO_2 Milestones provide greater reasonable progress than BART.

The Section 309 program includes a backstop trading program for emissions of sulfur dioxide (SO_2). The trading program would only go into effect if pre-established milestones in this plan were exceeded, thus triggering the trading program. Since the initial submittal in 2003, the states of Arizona and Oregon are no longer participants in the Section 309 program. The Section 309 states now include New Mexico, Utah, and Wyoming, and also the City of

Albuquerque (Bernalillo County). As a result of this now being a three-state and one local government program, the milestones for the backstop trading program have been revised.

Projections of Visibility Improvement

40 CFR § 59.309(d)(2) requires that a projection of visibility improvement be included in State Implementation Plans. Section A of the proposed revised SIP[1] (page 4) has been revised to update the baseline years (from 1997-2001 to 2004-2007) and to describe the Western Regional Air Partnership (WRAP) modeling scenarios. Tables A-1 and A-2 are replaced with a revised Table A-1. All sixteen Class 1 areas on the Colorado Plateau show improvement on the worst days, and no degradation on the best days.

Sulfur Dioxide Backstop Trading Program

40 CFR § 51.309(d)(4) outlines requirements for a market trading program for sulfur dioxide (SO_2). The long-term strategy to control regional haze includes placing region-wide emissions caps on large stationary sources of SO_2. If the voluntary emission reductions are not met, a backstop cap-and trade program will go into effect. Under the trading program, each source of sulfur dioxide emissions, such as power plants and refineries, would be given a certain number of "allowances" or amount of emissions that it could trade. A source that would otherwise exceed its allowances could, for example, purchase allowances from another source that is under its limit.

Proposed revisions to the trading program include changes to the milestones. Some of these changes are to reflect the change from a five state program to a three state program. Changes also reflect the changes in emissions from sources in the region since the SIP was first adopted in 2003. Penalty language has been revised to be consistent with EPA requirements and with the other states in the Section 309 program. The smelter set-aside has been removed because there are no permitted smelters in any of the participating states. New Mexico's smelters have all permanently shut down. If a smelter were to be started up in New Mexico, it would now be treated as a new source for all air quality regulatory purposes including permitting and compliance with the SO_2 milestones in the backstop trading program.

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[1] Except for references to the CFR or NMAC, all references to Sections in this testimony refer to the Revision to the New Mexico State Implementation Plan for Regional Haze, December 31, 2003, with Revisions dated December 20, 2010 and Additional Revisions dated May 2, 2011.

Adjustments for other states and tribes joining the program have been removed. Other states or tribes are not expected to join the program; however, if they did, changes to the milestones would be made as discussed in Section C.A1.4(c).

The language in Section C.A3 on changes in measurement methods has been removed. A section has been added to 20.2.73 NMAC to include requirements for changes in measurement methods. (20.2.73.F (2) NMAC). Section C.A3.4 includes a discussion of how the milestones would change for emissions reductions due to enforcement actions.

Section C.A5 includes a description of special penalty provisions for the year 2018. This is not a substantive change over the previous submittal; it simply conforms this SIP to the other states in the region. As noted in Section C.A5, the provisions implementing the penalty provisions are proposed as revisions to 20.2.81.110 NMAC.

Section C.C1 has been revised to clarify how allowance allocations would be made in the event that the trading program is triggered. General guiding principles and equity issues are addressed in this section. The section also gives details on how allocations would be made under the trading program. Set-asides are made for new source growth in the region. A public comment period is prescribed for the milestone allocation. The provision for a renewable energy set-aside has been removed. Other state programs such as the renewable portfolio standard and tax incentives are in place for renewable energy projects. The definition of "renewable energy resource" has therefore been proposed for removal from 20.2.81.7 NMAC.

Section C.C5.3 describes special reserve compliance accounts. These accounts are set for allowances for sources that do not have continuous emission monitors. This ensures that reductions and increases in SO2 emissions are equal. Sources without continuous emission monitors can use the allowances in the special reserve compliance accounts to meet their allocations, but these emissions would not be available to be traded.

Section C.D3 describes the provisions for oxides of nitrogen and particulate matter. These pollutants are not included in a trading program. States are developing Best Available Retrofit Technology (BART) demonstrations on a source-by-source basis for these pollutants.

Geographic Enhancement

Section K, Geographic Enhancement, has been completely revised to reflect EPA's approval of New Mexico's Phase I visibility SIP in 2006. The Phase I SIP is also called the Reasonably Attributable Visibility Impairment program. This program applies when a federal

land manager certifies to the state that a source or small group of sources cause visibility impairment at a specific Class I area. The state then determines whether that is the case, and then makes a determination of Best Available Retrofit Technology for the source or sources. We have also corrected a typographical error in the Appendix number - from Appendix XX to Appendix K. Appendix K describes the process western states will use in determining visibility impairment under the Phase I SIP.

Better than BART Analysis

Section M describes why the SO_2 backstop trading program is better than BART in compliance with 40 CFR 51.309(d)(4)(i). The states within the region (New Mexico, Utah, Wyoming and the City of Albuquerque) developed a list of potentially BART-eligible sources. We analyzed which of those sources were subject to BART, then determined the total emissions from those sources should BART be required on all of them. The milestones reflect the total of those emissions.

The milestones provide greater reasonable progress than BART for the reasons outlined in Section G of Section M. Section M.G.7 was revised to take out the language describing worsening visibility at Gila Wilderness. An error in the modeling results has been corrected; Gila Wilderness now shows improvement for both the 20 percent best and worst days. Table M-4 has been revised to reflect corrections to the modeling results for Gila Wilderness.